

Docket No.: 063288-0656

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	Customer Number: 20277
	:	
Bradford D. Henry et al.	:	Confirmation Number: 4669
	:	
Application No.: 10/823,787	:	Group Art Unit: 3721
	:	
Filed: April 14, 2004	:	Examiner: Tawfik, Sameh
	:	
For: METHOD AND DEVICE FOR CONTROLLING ENVELOPE FLAP DURING INSERTION		

TRANSMITTAL OF APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Submitted herewith is Appellant's Appeal Brief in support of the Notice of Appeal filed January 22, 2008. Please charge the Appeal Brief fee of \$10.00 to Deposit Account 500417, which is the difference between the current fee (\$510.00) for an Appeal Brief and the previously paid fee of \$500.00 paid on August 2, 2006. See MPEP 1207.04 Reopening of Prosecution After Appeal.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due under 37 C.F.R. 1.17 and 41.20, and in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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**Please recognize our Customer No. 20277 as
our correspondence address.**

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APPEAL BRIEF

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Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed January 22, 2008,
wherein Appellant appeals from the Primary Examiner's rejection of claims 1, 3-21 and 23-28.

I. Real Party In Interest

This application has been assigned to Bowe Bell + Howell Company.

II. Related Appeals and Interferences

Appellant is unaware of any related Appeal or Interference.

III. Status of Claims

1. Claims canceled: 2 and 22
2. Claims withdrawn from consideration, but not canceled: 29
3. Claims pending: 1, 3-21 and 23-29
4. Claims allowed: None
5. Claims rejected: 1, 3-21 and 23-28
6. Claims on appeal: 1, 3-21 and 23-28

IV. Status of Amendments

All amendments have been entered. No Amendment has been filed subsequent to the issuance of the Office Action dated October 19, 2007.

V. Summary of Claimed Subject Matter

The present claimed subject matter relates to high speed envelope transport and packing systems with a bending member for controlling an envelope flap during packing (page 1, lines 8-10 of the present specification).

Independent claim 1 describes a high-speed envelope transport and packing system. With reference to Figs. 1 and 2, the system comprises a conveyor (50) for conveying an open envelope (4) having a front wall (12), a back wall (14) and flap (8) extending away from the front wall (12). A packing station is included for inserting an object into the conveyed open envelope (see Fig. 6), such that the conveyed open envelope (4) and the object are in simultaneous, same direction motion along the conveyor during insertion of the object into the conveyed open envelope (4). A bending member (52, 54, 56, 58) is disposed in the packing station (see Figs.

4A-4B and 5A-5B). The bending member is configured to impart a bend in the conveyed open envelope (4) by displacing a center portion of the open envelope and to maintain the bend in the conveyed open envelope until the open envelope is gripped by a gripping device, in such a manner as to provide access to an interior of the open envelope or until the object is at least partially inserted into an interior of the open envelope (4) (page 7, line 17 through page 8, line 20 of the present specification). A joint (10) between the flap (8) and the open envelope (4) is perpendicular to the conveyor (50). The bending member is configured to bend the open envelope about an axis that is substantially perpendicular to the joint between the flap (8) and the open envelope (4) (page 6, lines 3-8 and page 8, lines 5-12 of the present specification).

Independent claim 21 describes an improvement in a high-speed envelope transport and packing system in accord with the present disclosure, which includes a bending member (52, 54, 56, 58) configured to bend a conveyed envelope (4) about the z-axis during conveyance of the conveyed envelope to increase the moment of inertia I_x of the conveyed envelope about the z-axis above a corresponding moment of inertia I_x of the conveyed envelope (4) in a flat state (Figs. 3A-3B; page 6, line 9 through page 7, line 11 of the present specification). The conveyed envelope (4) includes a front wall (12), a back wall (14) and a flap (8) extending away from the front wall (12). The bending member (52, 54, 56, 58) is configured to bend the front wall (12), back wall (14) and flap (8) of the conveyed envelope (4) about an axis that is substantially perpendicular to a joint (10) between the flap (8) and the conveyed envelope (4) (page 6, lines 3-8 and page 8, lines 5-12 of the present specification).

VI. Grounds of Rejection To Be Reviewed On Appeal

Claims 21 and 23 stand rejected under the second paragraph of 35 U.S.C. § 112 as being indefinite.

Claims 1, 3, 9-11, 15-21 and 23 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Yates (U.S. Pat. No. 5,715,648, hereinafter “Yates”).

Claims 4-8, 12-14 and 24-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Yates in view of Haas et al. (U.S. Patent No. 4,798,040, hereinafter “Haas”).

VII. Arguments

Rejection of Claims 21 and 23 under 35 U.S.C. § 112, Second Paragraph Should be Reversed

At page 2 of the Office Action dated October 19, 2007, the Examiner asserted that the limitation “the moment of inertia” in claim 21 lacks antecedent basis.

Indefiniteness under the second of 35 U.S.C. § 112 is a question of law. *Personalized Media Communications LLC v. U.S. International Trade Commission*, 161 F.3d 696, 48 USPQ2d 1880 (Fed. Cir. 1998); *Tillotson, Ltd v. Walboro Corp.*, 831 F.2d 1033, 4 USPQ2d 1450 (Fed. Cir. 1987); *Orthokinetics Inc. v. Safety Travel Chairs Inc.*, 806 F.2d 1565, 1 USPQ2d 1081 (Fed. Cir. 1986). The Examiner, of course, bears the initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention under any statutory provision. *In re Mayne*, 104 F.3d 1339, 41 USPQ2d 1451 (Fed. Cir. 1997); *In re Deuel*, 51 F.3d 1552, 34 USPQ2d 1210 (Fed. Cir. 1995); *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). This being the case, in rejecting a claim under the second paragraph of 35 U.S.C. § 112, the Examiner must provide a basis and fact and/or cogent technical reasoning to support the ultimate

legal conclusion that one having ordinary skill in the art, with the supporting specification in hand, would not be able to reasonably ascertain the scope of protection defined by a claim. *In re Okuzawa*, 537 F.2d 545, 190 USPQ 464 (CCPA 1976). That burden is not discharged by mere conclusory statements without support, or by focusing on claim language without ascertaining the **context** in which the language is employed from the written description of the specification and drawings. *Miles Laboratories, Inc. v. Shandon, Inc.*, 997 F.2d 870, 27 USPQ2d 1123 (Fed. Cir. 1993); *Oakley Inc. v. Sunglass Hut International* 316 F.3d 1331, 65 USPQ2d 1321 (Fed. Cir. 2003). Further, claims need not be drafted with surgical precision. Rather, consistent judicial precedent holds that reasonable precision in light of the particular subject matter involved is all that is required by the second paragraph of 35 U.S.C. § 112. *Zoltek Corp. v. United States*, *supra*; *Miles Laboratories, Inc. v. Shandon, Inc.*, *supra*; *North American Vaccine, Inc., v. American Cyanamid Co.*, 7 F.3d 1571, 28 USPA2d 1333 (Fed. Cir. 1993); *U.S. v. Teletronics Inc.*, *supra*; *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 231 USPQ (Fed. Cir. 1986). Applicants would emphasize that claims are not indefinite as long as they are reasonably discernable and claims are only indefinite if reasonable efforts to ascertain claim terms are futile. *Bancorp Services LLC v. Hartford Life Insurance Co.*, 359 F.3d 1367, 69 USPQ2d 1996 (Fed. Cir. 2004).

In applying these legal tenets to the exigencies of the case, Appellant submits that the Examiner did not discharge the initial burden of establishing a prima facie basis to deny Appellant's claims under the second paragraph of 35 U.S.C. § 112. Claim 21 describes, in part, a bending member configured to bend a conveyed envelope about the z-axis during conveyance of the conveyed envelope to increase the moment of inertia of the conveyed envelope about the z-axis above a corresponding moment of inertia of the conveyed envelope in a flat state, wherein the moment of inertia is defined as the conveyed envelope's resistance to bending. See page 6,

second full paragraph of the Detailed Description in the specification. Appellant submits that claim 21 is definite since it is reasonably discernable that the conveyed envelope has its own moment of inertia and that the moment of inertia is defined as the conveyed envelope's resistance to bending. In other words, during conveyance, the bent envelope's ability to resist bending is greater than the flat envelope's ability to resist bending. It is respectfully submitted that one of ordinary skill in the art would have understood this meaning of "the moment of inertia" terminology from the claim, particularly when read in light of the application disclosure. The claim terminology is reasonably definite. Accordingly, the rejection is not legally viable and should be reversed.

Rejection of Claims 1, 3, 9-11, 15-21 and 23 under 35 U.S.C. § 102(b) Predicated Upon Yates Should be Reversed

Appellant submits that the factual determination of lack of novelty under 35 U.S.C. § 102 requires the identical disclosure in a single reference of each element of a claim, such that the identically claimed subject matter is placed into the recognized possession of one having ordinary skill in the art. *Dayco Prods., Inc. v. Total Containment, Inc.*, 329 F.3d 1358, 66 USPQ2d 1801 (Fed. Cir. 2003); *Crown Operations International Ltd. v. Solutia Inc.*, 289 F.3d 1367, 62 USPQ2d 1917 (Fed. Cir. 2002). In this case, there are significant differences between the claimed subject matter and the apparatus disclosed by Yates that would preclude the factual determination that Yates identically describes the claimed subject matter within the meaning of 35 U.S.C. § 102.

Independent Claim 1

The primary reference to Yates teaches an apparatus for opening an envelope having a front panel, a back panel and a closing flap. See Summary section of Yates. Yate's apparatus includes: a device for supporting the envelope in a substantially horizontal plane wherein the back panel is situated above the front panel; a pair of pivotable paddles located beneath the closing flap and the front panel, each of the paddles having an interior end and an exterior end; a pair of pivotable, hold-down fingers located above and spaced from the pivotable paddles; a device for rotating the interior ends of the paddles downward; and a device for pivoting the hold-down fingers into engagement with the paddles when the ends of the paddles are rotated downward, whereby the front and back panels of the envelope are caused to separate. Id.

In the Office action dated October 19, 2007, the Examiner stated that Yates discloses that the conveyed open envelope and the object are in simultaneous, same direction motion along the conveyor during insertion of the object into the conveyed open envelope, as required in claim 1. The Examiner at the paragraph bridging pages 2-3 of the Office action appears to indicate that both envelope and the insert are conveyed in the same conveying direction and Fig. 3 shows conveying envelope 24b, while at the same time, the inserts are conveyed to envelope 24a.

Appellant submits that Yates, at Fig. 3, discloses an inserting station 20 for inserting paper documents into a **waiting** envelope 24a at stop 54. See also col. 1, lines 60-65 and col. 2, lines 36-42. The envelope is not moving during insertion. Hence, Yates fails to disclose or remotely suggest a high-speed envelope transport and packing system, wherein at the packing station, the conveyed open envelope and the object are in simultaneous, same direction motion during insertion of the object into the conveyed open envelope.

The envelope 24a in Yates inserting system is stationary at the time the paper documents are inserted into the envelope 24a. The Examiner's reference to conveyed envelope 24b is

misleading and improper, since this envelope 24b would replace envelope 24a at stop 54, and subsequently receive its own paper document insert while it is in a stationary position at stop 54. Thus, neither envelope 24a nor 24b of Yates is in motion when a paper document insert is inserted into the respective envelope. Since Yates does not meet the motion requirement of claim 1, Yates does not anticipate that independent claim.

Independent Claim 21

Independent claim 21 recites an improvement in a high-speed envelope transport and packing system including a bending member configured to bend a conveyed envelope about the z-axis during conveyance of the conveyed envelope to increase the moment of inertia of the conveyed envelope about the z-axis above a corresponding moment of inertia of the conveyed envelope in a flat state. Independent claim 21 describes that the moment of inertia is defined as the conveyed envelope's resistance to bending. In other words, during conveyance, the bent envelope's ability to resist bending is greater than the flat envelope's ability to resist bending.

It is not apparent where Yates at FIGS. 1, 2 or 6, as alleged by the Examiner, discloses a bending member that is configured to bend a conveyed envelope about the z-axis during conveyance of the conveyed envelope to increase the moment of inertia of the conveyed envelope about the z-axis above a corresponding moment of inertia of the conveyed envelope in a flat state. As described above, the envelope of Yates is stationary at stop 54 before it is opened/puckered and, therefore, the envelope is not being conveyed during its opening. Apparently, the envelope is conveyed in an unopened or unbent state. See Yates at col. 2, lines 36-60.

The Examiner argues that the definition of the moment of inertia of the conveyed envelope is "not given much patentable weight as such limitations written in (sic) a functional

language, while the claim is an apparatus claim and such language does not refer to the structure of the apparatus.”

Appellant is not aware of case law or statute that explains and supports the Examiner’s understanding/conclusion that functional language is given some sort of quantitative patentable weight or value different from that of other express limitations of a claim. It is legally erroneous for the Examiner to ignore any claim limitation. *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988). Moreover, it is believed that the bending member and its configuration are structural requirements in the context of the claim. As claimed, the bending member of the high speed envelope transport and packing system must be configured to bend a conveyed envelope about the z-axis during conveyance of the conveyed envelope to increase the moment of inertia of the conveyed envelope about the z-axis above a corresponding moment of inertia of the conveyed envelope in a flat state. The Examiner has failed to demonstrate where Yates discloses or remotely suggests such a structural element in the reference. *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

Yates therefore fails to meet all requirements of independent claim 21.

Reversal of Anticipation Rejection

Accordingly, Yates fails to identically disclose every feature recited in independent claims 1 and 21 as required for a tenable anticipation rejection under 35 U.S.C. § 102. The remaining dependent claims are patentably distinct over the applied Yates reference in view of their respective dependencies from independent claim 1 or 21.

The above identified differences between the claimed subject matter and the apparatus of Yates undermines the factual determination that Yates discloses a high-speed envelope transport

and package system identically corresponding to that claimed. *Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics Inc.*, 976 F.2d 1559, 24 USPQ2d 1321 (Fed. Cir. 1992); *Kloster Speedsteel AB v. Crucible Inc.*, 793 F.2d 1565, 230 USPQ 81 (Fed. Cir. 1986). Appellant, therefore, submits that the imposed rejection under 35 U.S.C. § 102 for lack of novelty as evidenced by Yates is not factually viable and, hence, solicits reversal thereof.

Rejection of Claims 4-8, 12-14 and 24-28 under 35 U.S.C. § 103(a) Predicated Upon Yates in View of Haas Should be Reversed

The claims rejected over Yates in view of Haas all depend from claim 1 or from claim 21, and as a result each of those claims includes all of the requirements of one of the independent claims. Appellant incorporates herein the arguments previously advanced in traversal of the rejection under 35 U.S.C. § 102(b) predicated upon Yates.

Appellant submits that the secondary reference to Haas does not cure the argued deficiencies of Yates with respect to independent claims 1 and 21. The Examiner relied on Haas for its disclosure pertaining to vacuum ports. Thus, the modification of Yates with Haas proposed in the § 103 rejection would not lead an artisan to an arrangement that meets the requirements of independent claim 1 or of independent claim 21. With respect to claim 1 and its dependents, the combination would still not teach a high-speed envelope transport and packing system, wherein at the packing station, the conveyed open envelope and the object are in simultaneous, same direction motion during insertion of the object into the conveyed open envelope. With respect to claim 21, the combination would still not teach a bending member of the high speed envelope transport and packing system must be configured to bend a conveyed envelope about the z-axis during conveyance of the conveyed envelope to increase the moment

of inertia of the conveyed envelope about the z-axis above a corresponding moment of inertia of the conveyed envelope in a flat state

Thus, even if the applied references are combined as suggested by the Examiner, the claimed subject matter will not result. *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 USPQ2d 1434 (Fed. Cir. 1988). Dependent claims 4-8, 12-14 and 24-28 are patentably distinct over the applied references in view of their respective dependencies from independent claim 1 or 21. Appellant, therefore, submits that the imposed rejection of claims 4-8, 12-14 and 24-28 under 35 U.S.C. § 103 for obviousness predicated upon Yates in view of Haas is not factually viable and, hence, solicit reversal thereof.

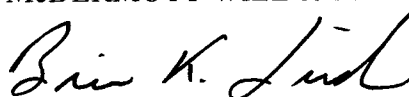
Conclusion

In conclusion, based upon the arguments submitted supra, Appellant submits that the Examiner's rejection under the second paragraph of 35 U.S.C. § 112 is not legally viable. Moreover, Appellant submits that the Examiner's rejections under 35 U.S.C. §§ 102 and 103 are factually and legally erroneous. Appellant, therefore, solicits the Honorable Board to reverse the Examiner's rejections 35 U.S.C. §§ 112, 102 and 103.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due under 37 C.F.R. 1.17 and 41.20, and in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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VIII. CLAIMS APPENDIX

1. A high-speed envelope transport and packing system comprising:

a conveyor for conveying an open envelope having a front wall, a back wall and a flap extending away from the front wall,

a packing station for inserting an object into the conveyed open envelope, such that the conveyed open envelope and the object are in simultaneous, same direction motion along the conveyor during insertion of the object into the conveyed open envelope; and

a bending member disposed in the packing station;

wherein the bending member is configured to impart a bend in the conveyed open envelope by displacing a center portion of the conveyed open envelope and to maintain the bend in the conveyed open envelope until the open envelope is gripped by a gripping device, in such a manner as to provide access to an interior of the open envelope or until the object is at least partially inserted into an interior of the open envelope,

wherein a joint between the flap and the open envelope is perpendicular to the conveyor, and

wherein the bending member is configured to bend the open envelope about an axis that is substantially perpendicular to the joint between the flap and the open envelope.

3. A high-speed envelope transport and packing system according to claim 1,

wherein the bending member comprises a rail disposed along a direction of conveyance of the open envelope in a position substantially corresponding to a center line of the conveyed open envelope with respect to a widthwise direction of the conveyed open envelope.

4. A high-speed envelope transport and packing system according to claim 3, wherein the rail comprises a plurality of vacuum ports.
5. A high-speed envelope transport and packing system according to claim 4, wherein the rail disposed along a direction of conveyance of the open envelope is disposed proximal to a side of the conveyed open envelope having the flap.
6. A high-speed envelope transport and packing system according to claim 5, wherein a front edge of the rail, relative to the direction of conveyance of the open envelope, is chamfered or curved.
7. A high-speed envelope transport and packing system according to claim 6, wherein the rail comprises a plurality of linearly arranged vacuum port manifolds, each vacuum port manifold comprising a plurality of vacuum ports.
8. A high-speed envelope transport and packing system according to claim 7, wherein front edges of the vacuum port manifolds, relative to the direction of conveyance of the open envelope, are chamfered or curved.
9. A high-speed envelope transport and packing system according to claim 3, wherein a height of the rail is less than about 5.0 mm.
10. A high-speed envelope transport and packing system according to claim 3, wherein a height of the rail is between about 1.25 mm and 1.75 mm.

11. A high-speed envelope transport and packing system according to claim 1, wherein the at least one bending member comprises paired rails disposed along a direction of conveyance of the open envelope in positions substantially equidistant to a center line of a conveyed open envelope with respect to a widthwise direction of the conveyed open envelope.

12. A high-speed envelope transport and packing system according to claim 11, wherein each of the paired rails comprises a plurality of vacuum ports.

13. A high-speed envelope transport and packing system according to claim 12, wherein one of the rails disposed along a direction of conveyance of the open envelope is disposed proximal to a side of the conveyed open envelope having the flap.

14. A high-speed envelope transport and packing system according to claim 13, wherein front edges of the rails, relative to the direction of conveyance of the open envelope, are chamfered or curved.

15. A high-speed envelope transport and packing system according to claim 11, wherein a height of the rails is less than about 5.0 mm.

16. A high-speed envelope transport and packing system according to claim 11, wherein a height of the rails is between about 1.25 mm and 1.75 mm.

17. A high-speed envelope transport and packing system according to claim 1,
wherein the bending member comprises a channel disposed along a direction of conveyance of the open envelope in a position substantially corresponding to a central region of the conveyed open envelope with respect to a widthwise direction of the conveyed open envelope.

18. A high-speed envelope transport and packing system according to claim 17,
wherein a width of the channel is greater than about half of a width of the conveyed open envelope with respect to the widthwise direction of the conveyed envelope.

19. A high-speed envelope transport and packing system according to claim 17,
wherein a width of the channel is greater than about three-quarters of a width of the conveyed open envelope with respect to the widthwise direction of the conveyed open envelope.

20. A high-speed envelope transport and packing system according to claim 1,
wherein the bending member comprises paired channels disposed along a direction of conveyance of the open envelope in positions substantially equidistant to a center line of a conveyed open envelope with respect to a widthwise direction of the conveyed open envelope,
and

wherein the paired channels are disposed to receive widthwise ends of the conveyed open envelope.

21. In a high-speed envelope transport and packing system, the improvement comprising:

a bending member configured to bend a conveyed envelope about the z-axis during conveyance of the conveyed envelope to increase the moment of inertia of the conveyed envelope about the z-axis above a corresponding moment of inertia of the conveyed envelope in a flat state, said moment of inertia defined as the conveyed envelope's resistance to bending,

wherein the conveyed envelope includes a front wall, a back wall and a flap extending away from the front wall,

wherein the bending member is configured to bend the front wall, back wall and flap of the conveyed envelope about an axis that is substantially perpendicular to a joint between the flap and the conveyed envelope.

23. The improvement in a high-speed envelope transport and packing system according to claim 21,

wherein the bending member comprises at least one of a center rail, a plurality of rails, a curved plate, a center channel, and a plurality of channels disposed along at least one side of a conveyed envelope, and

wherein the bending member is configured to displace a central portion of the conveyed envelope by less than about 5.0mm relative to widthwise ends of the conveyed envelope.

24. A high-speed envelope transport and packing system according to claim 1, further comprising:

a vacuum plate provided in the packing station;

wherein the vacuum plate is configured to bias an envelope and an envelope flap against the vacuum plate at least during insertion of an insert into the conveyed open envelope.

25. A high-speed envelope transport and packing system according to claim 24, wherein the vacuum plate comprises a plurality of vacuum ports extending widthwise across a portion of the packing station corresponding to a conveyed open envelope.

26. A high-speed envelope transport and packing system according to claim 24, wherein the vacuum plate is removably attached to the packing station.

27. A high-speed envelope transport and packing system according to claim 24, wherein the vacuum plate is provided within a central region of the packing station corresponding to a central portion of a conveyed open envelope.

28. A high-speed envelope transport and packing system according to claim 24, wherein the conveyor continuously conveys a plurality of open envelopes, wherein the vacuum plate is configured to bias each of the plurality of continuously conveyed open envelopes, as well as associated envelope flaps thereof, against the vacuum plate at least during insertion of an insert into the respective one of the continuously conveyed open envelopes.

IX. EVIDENCE APPENDIX

No evidence has been submitted of record under 37 C.F.R. §§ 1.130, 1.131 or 1.132.

X. RELATED PROCEEDINGS APPENDIX

Not applicable. Appellant is unaware of any related proceedings.